

COPY

MEMORANDUM OF UNDERSTANDING  
(Funding for Emergency Sedimentation Removal)

This Memorandum of Understanding ("MOU") is entered into as of December \_\_, 2010, by and between the Twitchell Management Authority ("TMA") and the County of Santa Barbara Water Agency ("CWA"). Each of TMA and CWA are individually referred to herein as a "Party" and collectively as the "Parties".

RECITALS

(A) The TMA is an unincorporated association of public and private parties that was created for a limited purpose by a stipulation of the Superior Court of the State of California, County of Santa Clara, dated June 30, 2005, as part of the Santa Maria Groundwater Adjudication (Lead Case No. CV 770214) ("Stipulation"). The TMA is responsible for funding and oversight of certain operations and capital projects related to the Twitchell dam and reservoir ("Twitchell Project").

(B) The Santa Maria Valley Water Conservation District ("District") is responsible for carrying out and implementing operations and projects at the Twitchell Project in consultation with the TMA and other federal, state and local regulatory agencies operating within the County of Santa Barbara.

(C) On April 23, 2010, the TMA and District finalized the Twitchell Project Manual, which set forth a five year capital program of projects necessary to ensure the continued reliability of the Dam, including projects to mitigate the impacts of sedimentation. One of the high priority projects was for downstream sediment removal from the Cuyama River to prevent the backup of sediment at the base of the Dam (which project is described in Appendix 2(g) of

the Twitchell Project Manual). The District declared an emergency with respect to the need to implement the downstream sediment removal and the Army Corps of Engineers issued an emergency permit to carry out sediment removal in the Cuyama River ("Emergency Removal"). The District thereafter selected Wood Brother's Contractors to carry out the Emergency Removal, however, the grant funding that was anticipated by the District to pay for the Emergency Removal has not materialized. The Army Corps of Engineers has extended the deadline for work to commence under the emergency permit until December 31, 2010, and the District has requested assistance from the TMA to fund the Emergency Removal.

(D) The TMA maintains an annual budget which is funded by its members to carry out operations and projects at the Twitchell Project. TMA has entered into a Memorandum of Understanding with the District dated December 3, 2010 ("District MOU"), to provide Five Hundred Thousand Dollars (\$500,000.00) in emergency funding from its operating budget to the District for to the contractor to commence the Emergency Removal. It is anticipated that an additional Two Hundred Thousand Dollars (\$200,000.00) will be necessary for engineering and other project costs related to the Emergency Removal, for a total project cost of Seven Hundred Thousand Dollars (\$700,000.00) ("Emergency Funding").

(E) The CWA coordinates with the TMA and the District with respect to maintenance and operation of the Twitchell Project and has determined that it is vital to the continued reliable operation of the Twitchell Dam that the Emergency Removal be completed without delay. The CWA has determined that an emergency situation exists that may impact the interests of the CWA and that it therefore is willing to contribute emergency funding to assist the TMA with the Emergency Funding and additional funding necessary for the Emergency Removal in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants set forth herein, the Parties agrees as follows:

1. Emergency Funding.

(a) TMA has instructed the City of Santa Maria, the custodian of TMA accounts, to pay the sum of Five Hundred Thousand Dollars (\$500,000.00) from its general account to District for the funding of the Emergency Removal. One Hundred Fifty Thousand Dollars (\$150,000.00) of such amount is intended to pre-fund the Emergency Removal prior to the receipt of CWA funds ("Emergency Funding Advance").

(b) CWA agrees to pay Three Hundred Fifty Thousand Dollars (\$350,000.00) to the TMA for Twitchell Projects. The TMA will work with the District on the use and allocation of Emergency Funding.

(c) The sole purpose of this MOU is to provide the Emergency Funding as necessary to complete the Emergency Removal on a timely basis and CWA shall in no event become a contracting party in connection with the Emergency Removal project or the contractor or assume any liability or responsibility for the proper implementation or completion of the Emergency Removal project. It is the express intent of the Parties that there shall be no third party beneficiaries of this MOU.

(d) The commitment made by CWA pursuant to this MOU is limited to the Emergency Funding and in no event shall CWA be obligated to provide any additional funding for the Emergency Removal.

2. Project Administration

(a) The District shall be responsible for the distribution of the initial Five Hundred Thousand (\$500,000.00) of Emergency Funding to the contractor for the Emergency

Removal pursuant to the terms of the District MOU. The TMA shall disburse the reimbursement of up to Two Hundred Thousand Dollars (\$200,000.00) in actual engineering and other costs and expenses incurred by the District in connection with the Emergency Removal and the administration of the Project Contract, including without limitation, a reasonable allocation of internal TMA and District resources ("Project Costs").

(b) The Emergency Funding shall come from funds provided by TMA and CWA. The TMA shall be entitled to use the reimbursement for the Emergency Funding Advance in any manner.

(c) Pursuant to the terms of the District MOU, the District is solely responsible as the contracting entity for the implementation of the Emergency Removal and has agreed to indemnify, defend and hold harmless, the CWA from any liability which arises from the Emergency Removal and the Project Contract.

3. Miscellaneous Provisions.

(a) Termination. In the event that the District MOU is terminated prior to the commencement of work on the Emergency Removal or the Emergency Removal has not commenced as of December 31, 2010, then TMA and CWA shall have the right, upon written notice to the other Parties, to withdraw the Emergency Funding and all obligations of TMA and CWA under this MOU shall terminate and be of no further force or effect.

(b) Subject to Applicable Law. The Parties acknowledge and agree that this MOU and the rights and obligations of the Parties hereunder shall be subject to the laws governing public agencies as they now exist and as they may be hereafter amended or codified by the legislature of the State of California.

(c) Entire Agreement. This MOU contains the entire understanding of the Parties with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between the Parties. This MOU cannot be amended except in writing signed by both Parties.

(d) No Waiver. Any failure or delay on the part of a Party to exercise any right under this MOU shall not constitute a waiver of the right, and shall not preclude such Party from exercising or enforcing the right, or any other provision of this MOU, on any subsequent occasion.

(e) Notices. All notices or other communications required or desired to be given pursuant to this MOU shall be in writing and shall be hand-delivered or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered or one (1) day after being deposited for next day delivery with Federal Express or a similar courier. Each such notice or communication shall be addressed to the Parties at their respective addresses set forth next to their signatures below, or such other address as a Party notifies the other in writing.

(f) Headings; Section References. Captions and headings appearing in this MOU are inserted solely as reference aids for the ease and convenience; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

(g) Severability. If any provision of this MOU is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the extent reasonable under the circumstances and otherwise shall be deemed deleted from this

MOU. The other provisions of this MOU shall remain in full force and effect so long as the material purposes of the MOU and understandings of the Parties are not impaired.

(h) Binding Effect Assignment. This MOU shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns. No Party shall assign this MOU in whole or in part without first receiving the prior written approval of the other Parties. Any unauthorized attempt to assign this MOU shall be null and void.

(i) Attorneys Fees. In the event that any action or proceeding is brought to enforce one or more of the terms of this MOU, to restrain an alleged violation of this MOU, or to determine the validity of this MOU or any part thereof, the prevailing Party in any such action or proceeding shall be entitled to recover from the other its reasonable costs and attorneys' fees, in addition to any other remedies available to it in law or equity.

(j) Governing Law and Venue. This MOU is a contract governed in accordance with the laws of the State of California. THE PARTIES HEREBY AGREE THAT VENUE FOR ANY ACTION BROUGHT TO ENFORCE THE TERMS OF THIS MOU SHALL BE IN A COURT OF COMPETENT JURISDICTION IN THE COUNTY OF SANTA BARBARA, CALIFORNIA, AND CONSENT TO THE JURISDICTION THEREOF.

(k) Execution by TMA. The execution of this MOU by the TMA has been authorized by the representatives of the members of the TMA pursuant to a meeting of the representatives held on December 3, 2010.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have executed this agreement as of the date first written above.

TMA:

Twitchell Management Authority

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attest:

By: \_\_\_\_\_

COUNTY:

APPROVE AS TO CONTENT:  
SCOTT D. MCGOLPIN  
PUBLIC WORKS DIRECTOR

By: \_\_\_\_\_  
Date: \_\_\_\_\_  
Address: 123 E. Anapamu Street  
Santa Barbara, CA 93101

APPROVE AS TO FORM:  
DENNIS MARSHALL  
COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy

APPROVE AS TO ACCOUNTING FORM:  
ROBERT W. GEIS, C.P.A.  
AUDITOR-CONTROLLER

By: \_\_\_\_\_  
Deputy